IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

WP(C).No. 10970 of 2006(E)

(ORDER DATED 25/2/2006 IN I.A.204/2006 IN OS.147/2000 of MUNSIFF'S COURT, ALATHUR)

.....

PETITIONER:

C.V.PREMAKUMARI, AGED 44 YEARS,
W/O. MADHAVANKUTTY, MADHAVA MANDIRAM, KANNANNOOR AMSOM, PUTHUKODE DESOM, ALATHUR TALUK.

BY ADV. SRI.P.VIJAYA BHANU
SRI.P.SANTHOSH (PODUVAL)

RESPONDENTS:

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1. **C.VALSALA, D/O. AMMALU AMMA, PARAKKAD, KANNANNOOR AMSOM, PUTHUKODE DESOM, ALATHUR TALUK.**

2. **SADASIVAN, S/O. PONNU, ALINGALPARAMBU, KANNANNOOR AMSOM, PUTHUKODE DESOM, ALATHUR TALUK.**

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC.NO.10970/2006 E

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE PLAINT IN O.S.NO.147/2000 BEFORE THE MUNSIFF COURT, ALATHUR DTD. 31/05/2000.

EXT.P2: COPY OF THE JUDGMENT IN A.S.NO.147/2000 OF THE COURT OF THE MUNSIFF, PALAKKAD DTD. 23/03/2001.

EXT.P3: COPY OF THE JUDGMENT IN A.S.NO.186/2001 IN THE COURT OF THE DISTRICT JUDGE OF PALAKKAD DTD. 29/10/2003.

EXT.P4: COPY OF THE PARTITION DEED NO.803/1974 DTD. 16/05/1974.

EXT.P5: COPY OF THE REPORT IN O.S.NO.147/2000 FILED BY THE ADVOCATE COMMISSIONER AFTER REMAND DTD. 01/12/2005.

EXT.P6: COPY OF THE APPLICATION FILED BY THE PETITIONER HEREIN AS I.A.NO.704/06 TO REMIT THE REPORT TO THE COMMISSIONER DTD. 04/02/2006.

EXT.P7: COPY OF THE ORDER IN I.A.NO.204/2006 IN O.S.NO.147/2000 OF THE MUNSIFF COURT, ALATHUR DTD. 25/02/2006.

/TRUE COPY/

KSS

PIUS C. KURIAKOSE, J.

W.P.(C) NO. 10970 of 2006

Dated this the 29th day of June , 2007

JUDGMENT

This writ petition is remaining defective on the reason that service is not complete. I notice that notice was ordered by speed post as early as in 24.5.2006. I have gone through Ext.P7, which is the impugned order. By Ext.P7 the learned Munsiff has dismissed the application filed by the plaintiff to remit the commission report under Order 26 Rule 10(3).

2. I have heard the learned counsel for the petitioner. According to him, the Advocate commissioner's report was liable to be remitted for the various reasons stated in the affidavit in support of the application. Under Ext.P7, the learned Munsiff has observed that whatever is relevant for resolving the issue involved in the suit has already been reported by the Advocate commissioner and that the aspects for which the plaintiff wants the report to be remitted are not relevant. The learned counsel

maintains that those aspects are relevant. I am of the view that the petitioner will not gain anything by allowing the trial by his own suit to remain stayed. It is open to the petitioner to examine the Advocate Commissioner during trial and to convince the learned Munsiff that the report does not contain answers to all the relevant questions involved in the suit. It is also open to the petitioner to adduce evidence in support of his contention that the aspects referred to in the application for remittance are relevant for resolving the controversies in the suit.

Under the above circumstances, even as I declined relief in this writ petition, I direct the learned Munsiff to permit the petitioner to adduce whatever evidence he wants in support of his request for remittance of the commissioner's report. The court, after entire evidence in the suit comes on record, will hear the parties initially on the question as to whether the question of acceptability or sufficiency of the advocate commissioner's report and pass orders on that question first, even before the final judgment in the suit is delivered. It is needless to mention that the learned Munsiff while deciding the above question as directed above, will not unduly influenced by his own observations in

Ext.P7 regarding the relevancy of the various aspects mentioned in the application.

PIUS C. KURIAKOSE,
JUDGE.

Dpk